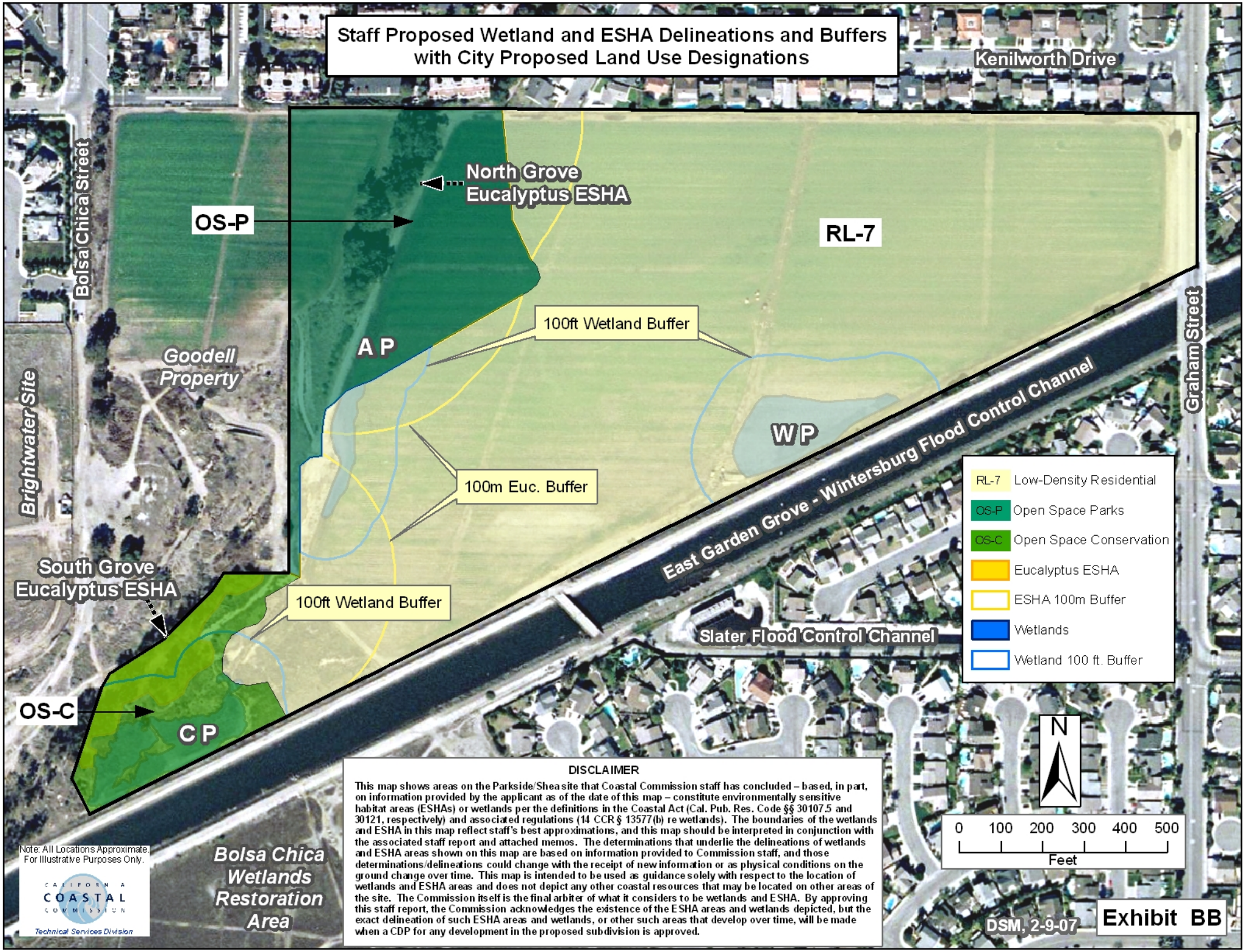

Staff Proposed Wetland and ESHA Delineations and Buffers with City Proposed Land Use Designations
Kenilworth Drive
Bolsa Chica Street
Graham Street
Brightwater Site
Goodell Property
North Grove Eucalyptus ESHA
South Grove Eucalyptus ESHA
OS-P
OS-C
RL-7
A P
C P
W P
100ft Wetland Buffer
100m Euc. Buffer
100ft Wetland Buffer
East Garden Grove - Wintersburg Flood Control Channel
Slater Flood Control Channel
Bolsa Chica Wetlands Restoration Area
RL-7 Low-Density Residential
OS-P Open Space Parks
OS-C Open Space Conservation
Eucalyptus ESHA
ESHA 100m Buffer
Wetlands
Wetland 100 ft. Buffer
N
0 100 200 300 400 500
Feet
DISCLAIMER
This map shows areas on the Parkside/Shea site that Coastal Commission staff has concluded – based, in part, on information provided by the applicant as of the date of this map – constitute environmentally sensitive habitat areas (ESHAs) or wetlands per the definitions in the Coastal Act (Cal. Pub. Res. Code §§ 30107.5 and 30121, respectively) and associated regulations (14 CCR § 13577(b) re wetlands). The boundaries of the wetlands and ESHA in this map reflect staff's best approximations, and this map should be interpreted in conjunction with the associated staff report and attached memos. The determinations that underlie the delineations of wetlands and ESHA areas shown on this map are based on information provided to Commission staff, and those determinations/delineations could change with the receipt of new information or as physical conditions on the ground change over time. This map is intended to be used as guidance solely with respect to the location of wetlands and ESHA areas and does not depict any other coastal resources that may be located on other areas of the site. The Commission itself is the final arbiter of what it considers to be wetlands and ESHA. By approving this staff report, the Commission acknowledges the existence of the ESHA areas and wetlands depicted, but the exact delineation of such ESHA areas and wetlands, or other such areas that develop over time, will be made when a CDP for any development in the proposed subdivision is approved.
Note: All Locations Approximate. For Illustrative Purposes Only.
CALIFORNIA COASTAL COMMISSION
Technical Services Division
DSM, 2-9-07
Exhibit BB

Neighbors for Wintersburg Wetlands Restoration
17451 Hillgate, Huntington Beach, CA 92649-4707 - 714-625-0876 - www.bixby.org/parkside

February 1, 2007

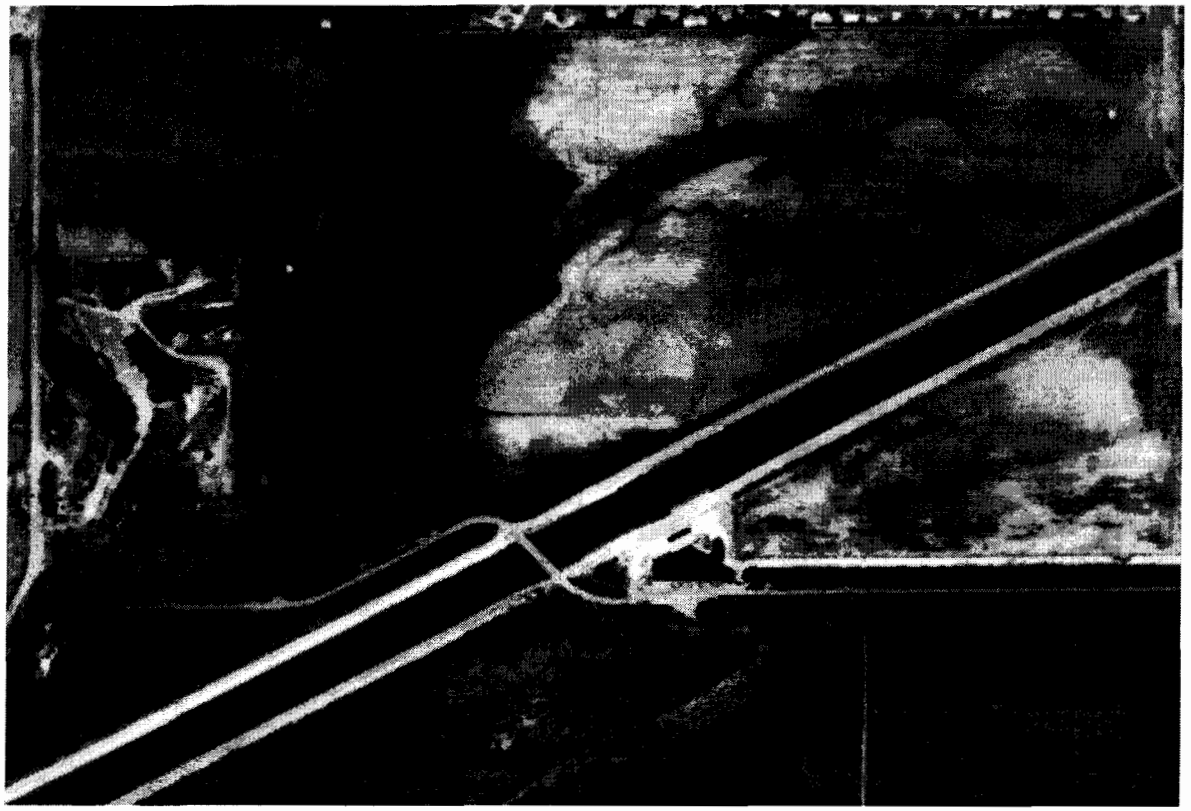
California Coastal Commission
South Coast Area Office
ATTN: Meg Vaughn
200 Oceangate, Suite 1000
Long Beach, CA 90802-4416

RE: Huntington Beach LCPA HNB-MAJ-1-06 and historic unpermitted fills on the Shea Homes Parkside Estates property

Dear Ms. Vaughn,

The Shea Parkside property has had a long history of unpermitted fill importation which is relevant to the LCPA discussions about the amount of wetlands present on the site. State law requires the Coastal Commission to treat habitat and wetlands destruction that occurred without a valid CDP as if the destruction had never happened.

Section 5.8 of the Parkside Estates EIR refers to the following photograph dated January 31, 1970, and notes that "the western portion of the site below the knoll is flooded":

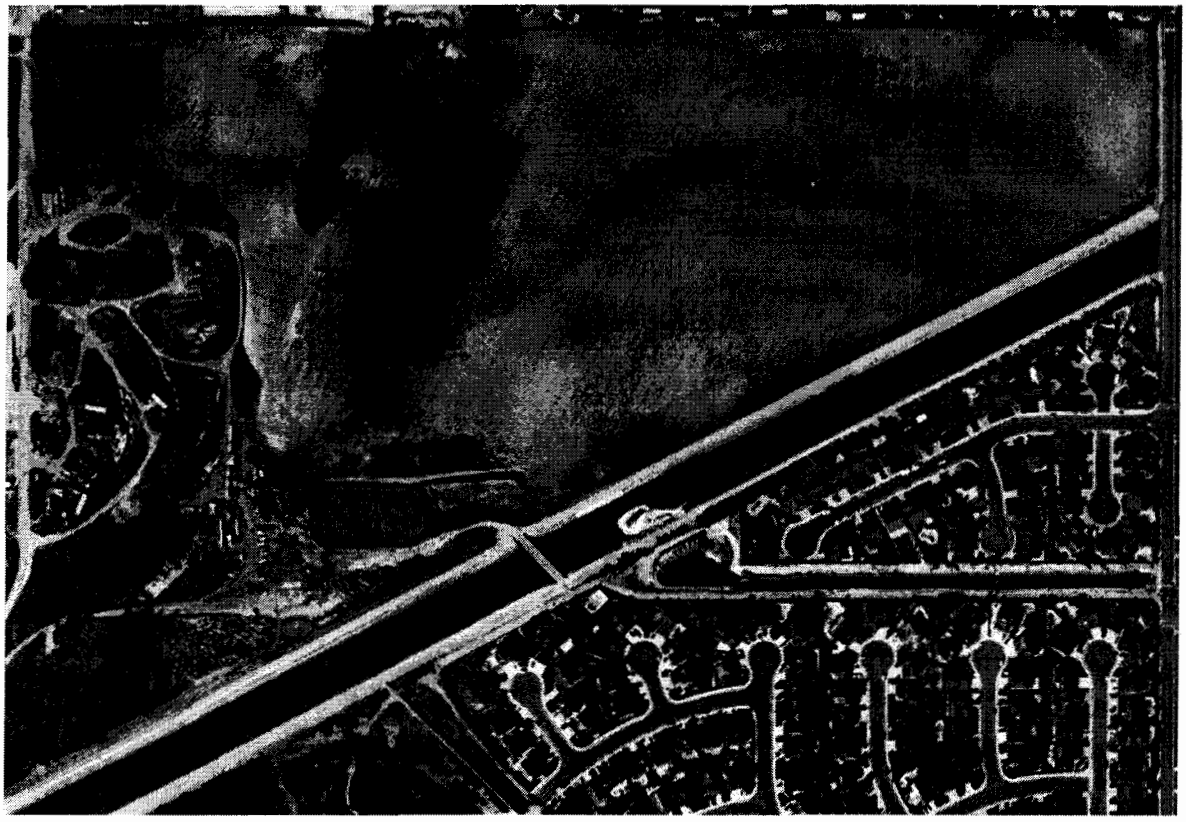


It's possible that this flooding extends all the way south to the road that cuts across the southwestern end of the property and leads to the bridge over the Wintersburg Flood Control Channel. At a minimum, the soil in the vicinity of this road appears to be highly saturated. There do not appear to be any major topographic variations on this flooded/saturated portion of the property, except for this road.

Now consider this photograph dated January 24, 1978, which is the first high-quality photograph available after passage of the Coastal Act in 1976:

EIR section 5.8 discussion of a different photo dated December 28, 1976, notes "A large pad of freshly-spread soils covers the southwestern corner area, just east of stables". This is still visible in the above photo between the road and the stables on the southeastern corner of the Goodell property, and is a hint of the major topographic changes to come in subsequent years. Aside from those recently spread soils and the road, there are no major topographic differences in the southwestern portion of the property which is today owned by Shea.

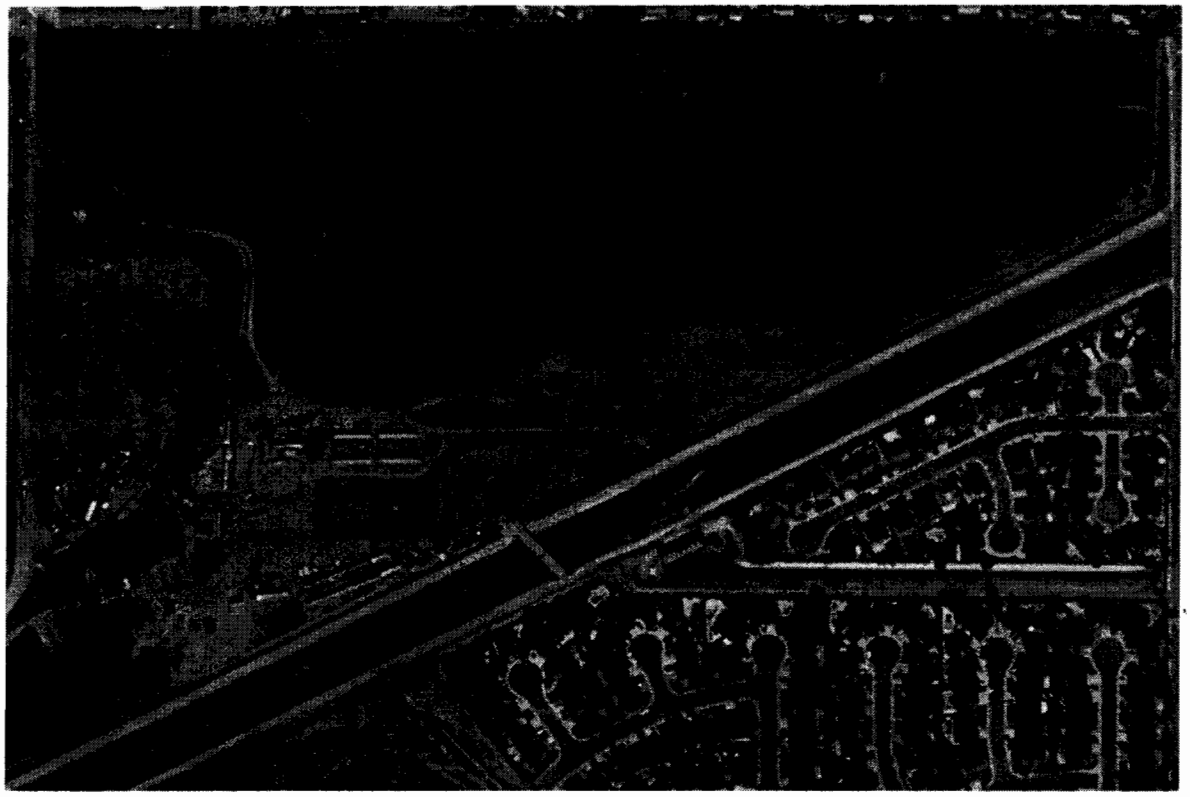
By February 19, 1983, major changes are visible as seen in the following photo:



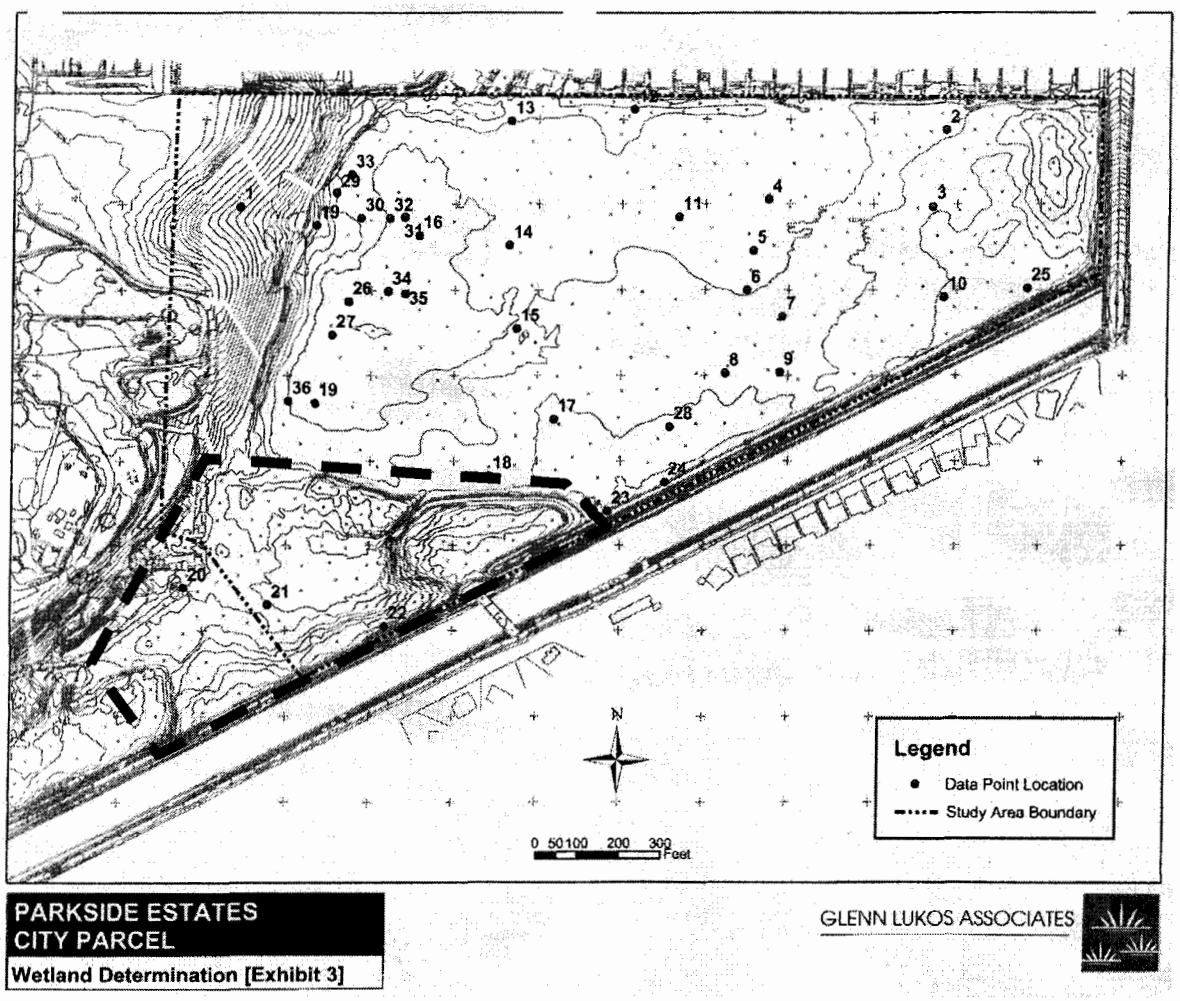
The EIR section 5.8 has this to say about the above photo: "numerous 'spots,' which may be piles of fill or other material are apparent in the area between the arena and channel". The EIR neglects to mention that flooding and/or saturation are plainly visible between the northwestern corner of the arena and the northern property boundary.

The following oblique-angle photo from October 27, 1989, clearly shows a considerable topographic fill-raised feature in the area adjacent to the bridge:

The next photo is dated March 15, 1990, and shows that the stables have altered a large portion of the property:



Here is a topographic map from a GLA wetland determination report dated January 6, 2004:



I have annotated the above map with a thickly dashed black line indicating the area of increased elevation that simply did not exist back in 1978 shortly after the Coastal Act was passed.

The reason for the repeated fill importation over the years is that the stables operator needed to raise the facilities out of the chronic mud and flooding. This action strongly hints that wetland hydrology was present, as so graphically evidenced by the 1970 photo at the beginning of this letter.

Where wetland hydrology exists, hydric soils are also likely to be present. The modern so-called county parcel is generally acknowledged by all parties (or at least not opposed by the applicant) to contain hydric soils. These soils extend right up to the southwestern boundary of the fill zone, and likely continue underneath the deep fill which has protected the original hydric soils from agricultural disturbance such as disking and deep ripping.

If excavation were to be done in the fill zone down to original pre-fill grade level, it is entirely possible that hydric soils would be found. Indeed, some evidence of this can be found today in the unpermitted drainage ditch that was dug across the county parcel back in December 2002.

The digging of the drainage ditch has apparently exposed the pre-fill hydric soils; Dr. Lyndon Lee refers to this ditch on p.4 of the Entrix memo dated December 14, 2006:

> "In the southwest corner of the site, a channel that was constructed to run approximately northeast-southwest and to connect the AP Wetland with the "County" parcel was not mapped by CCC. This channel falls within CCC jurisdiction by virtue of the presence of at least two wetland parameters: hydric soils and hydrophytic vegetation."

As previously noted, the law requires the Coastal Commission to treat habitat and wetlands destruction that occurred without a valid CDP as if the destruction had never happened. None of the stables-related fills were done with a valid CDP. One of my neighbors, Dan Kittredge, was the person who complained to the city about the fills in the late 1980s, after which time the fills were stopped.

Therefore, it would be prudent for the Coastal Commission to require additional testing excavations to original pre-fill grade level throughout the former stables fill zone to determine if hydric soils are still present. If hydric soils are present, then the Commission must consider this zone to be a one-parameter wetland and issue an order for the illegal fills to be removed.

Sincerely,

Mark D. Bixby

Mark D. Bixby
Neighbors for Wintersburg Wetlands Restoration
17451 Hillgate Ln
Huntington Beach, CA 92649-4707
714-625-0876
mark@bixby.org
http://www.bixby.org/parkside/

February 9, 2007

Ms. Meg Vaughn
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4416

Th22a

Re: Huntington Beach LCPA HNB-MAJ-1-06
February 1, 2007 Letter from NWWR Regarding Historic Unpermitted Fills

Dear Ms. Vaughn:

We have received a copy of a February 1, 2007 letter written by Mr. Mark Bixby of Neighbors for Wintersburg Wetlands Restoration alleging that historic fills on the Shea Homes Parkside Estates property were unpermitted or otherwise placed without Coastal Commission permission.

In 1997, we compiled an exhaustive record of aerial photos of the site going back to the 1950s. This "Report of Historical Site Usage" which contains 25 photos, has been in staff's possession since that time. No question has ever been raised by Mr. Bixby or by staff about the fill that Mr. Bixby is just now calling to our attention.

The first two photos provided by Mr. Bixby are sufficient to refute allegations that the fill occurred after the 1976 Coastal Act. The upper photo is from 1970. The lower photo is from 1978.

Based on historic photos preceding 1970, it is clear that an extension of Slater Avenue connected Graham Street on the east with Bolsa Avenue on the west. The bridge at Slater pump station was constructed in the 1960s to carry Slater Avenue over the newly-constructed East Garden Grove-Wintersburg flood control channel, and the fill in question is associated with the construction of the levees and bridge. Structural and geometric facts of levee construction and road alignment require that the side slopes of the levees be constructed at approximately 1.5:1 to 2:1 horizontal:vertical, and that street grades to be no steeper than approximately 10:1, as sketched in Attachment 2. In order for a street crossing at the top of the levee to descend to overall ground surface north of the levee, a 10:1 grade must pass at all points higher than the 2:1 grade beneath. The difference between road surface and levee or ground surface must be made up by fill. Both of Mr. Bixby's first two photos show the northerly slopes of the levees, and the northerly side slope of Slater Avenue in shadow. In order for Slater Avenue to take this alignment, fill must have existed prior to 1970. The 1978 photo is nearly identical,

17

confirming that the Slater Avenue fill preceded the Coastal Act of 1976 and even Prop. 20.

The remaining photos provided by Mr. Bixby illustrate land uses in the City- and County-administered areas primarily related to horse stables. Using these photos and the geotechnical studies that were made before purchase of the property by Shea Homes in 1996, Pacific Soils has characterized the nature of the fill and alleged fill. (Attachment 3) The actual fill associated with the Slater Avenue crossing is identified in the studies as "flood control channel embankment fill" and "fill adjacent to flood control channel" and predates the Coastal Act and Prop. 20. Another area of fill generally to the north and east of the Slater Avenue crossing is identified as "fill mantle resultant from site demolition" and is a thin veneer of fill and disturbed soil associated with stable operations and, ultimately, demolition of the stable facilities. The remaining areas alleged by Mr. Bixby to be fill are in fact native soils with scattered fill piles.

The stable operations illustrated in Mr. Bixby's remaining photos illustrate an evolving land use that was permitted by both the City and County as well as by the Coastal Commission (CDP No. 5-82-278). The stables and riding activities that expanded the fill were conducted openly and notoriously, with proper permits, long before Shea Homes purchased the property.

The nature and timing of Mr. Bixby's letter, which is based on information that has long been available in the EIR, concerns us because it appears to be yet another tactic calculated to result in further delay in the 10-year process that we have already endured.

We are looking forward to a full public hearing on this LCP Amendment on Thursday, February 15.

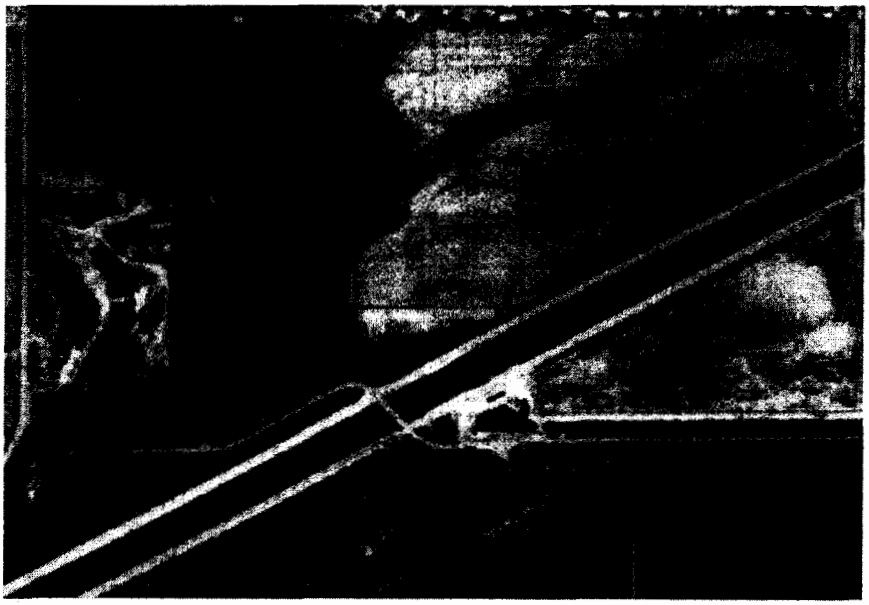
Sincerely,
Shea Homes

Ron Metzler
Vice President, Planning & Entitlement

cc: Dr. Mark Johnsson
Ms. Sherilyn Sarb

Attachment 1. Photos Before and After Coastal Act of 1976

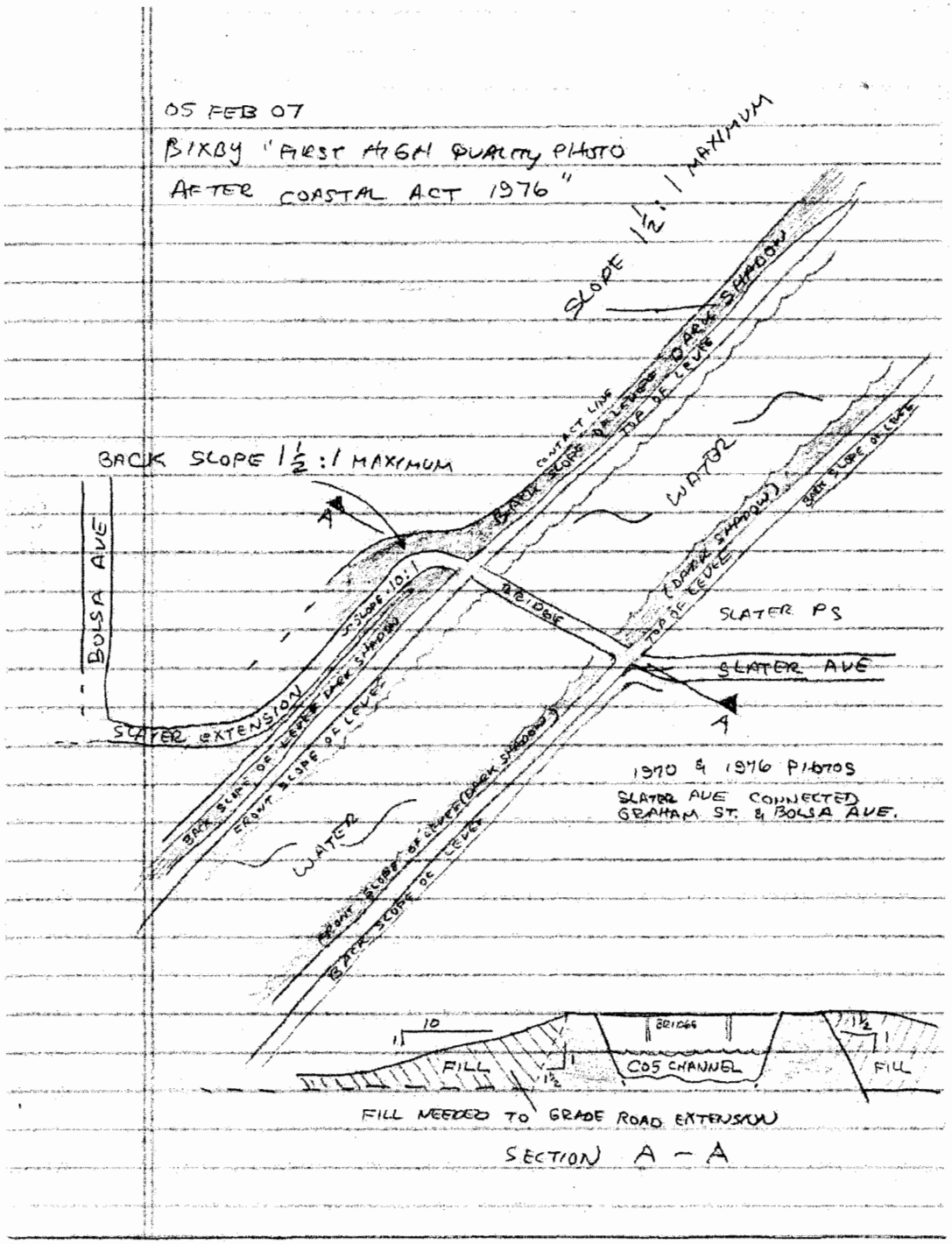
Section 5.8 of the Parkside Estates EIR refers to the following photograph dated January 31, 1970, and notes that "the western portion of the site below the knoll is flooded":

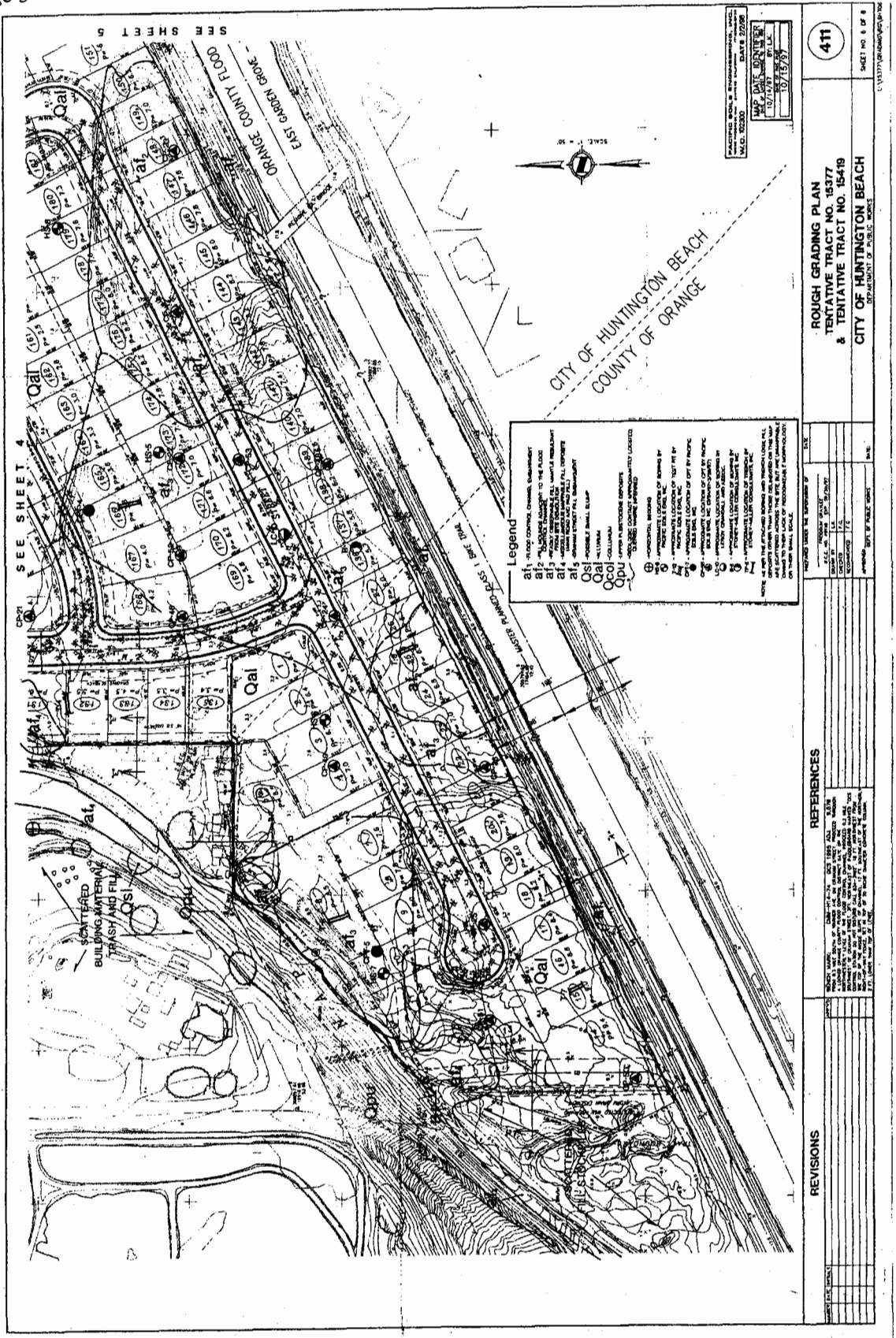


Now consider this photograph dated January 24, 1978, which is the first high-quality photograph available after passage of the Coastal Act in 1976:

Source: Neighbors for Wintersburg Wetlands Restoration, M. Bixby, February 1, 2007.

Attachment 2. Levee and Road Geometry




SEE SHEET 5
SEE SHEET 4
ORANGE COUNTY FLOOD
EAST GARDEN GROVE
CITY OF HUNTINGTON BEACH
COUNTY OF ORANGE
MASTER PLANNED CLASS I BIKE TRAIL
SCATTERED BUILDING MATERIAL TRASH AND FILL
Qal
Qpu
Qsl
Legend
ROUGH GRADING PLAN
TENTATIVE TRACT NO. 15377
& TENTATIVE TRACT NO. 15419
CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS
411
REFERENCES
REVISIONS

SheaHomes

Caring since 1881

Our Vision...to be the most respected builder in the country

February 8, 2007

Th22a

RECEIVED
South Coast Region
FEB - 9 2007
CALIFORNIA
COASTAL COMMISSION

Mr. Patrick Kruer, Chairman, and Members
of the California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco CA 94105

RE: City of Huntington Beach LCP Amendment No. 1-06 (Parkside Estates Project

Dear Chairman Kruer and Commissioners:

On Thursday, February 15, 2007, the Commission will consider a project-specific amendment to the City of Huntington Beach LCP which relates to the Shea Homes – Parkside Estates project. This LCP amendment (LCPA) completes a "white-holed" area in the City's LCP, and designates a portion of our 50-acre site for low density residential development, while providing the following:

- Significant open space;
- Significant protections for ESHA and wetlands;
- Extensive public access and recreational amenities and improvements;
- State-of-the-art water quality treatment; and
- Substantial improvement to regional flood and tidal protection.

We have worked cooperatively with your staff and provided numerous studies at their request. We have reached agreement with staff on all matters except for two remaining points of disagreement, namely, whether the "WP" area is a wetland, and whether the northern eucalyptus trees constitute ESHA and require a 100-meter buffer.

We enclose for your review a briefing booklet which discusses these issues and provides an overview of the extensive regional and biological benefits provided by the LCPA, as proposed to be altered by the City and Shea Homes. Also enclosed are two technical papers discussing the status of the WP area and northern eucalyptus trees.

We look forward to discussing the LCPA further with you at the hearing on February 15.

Very truly yours,

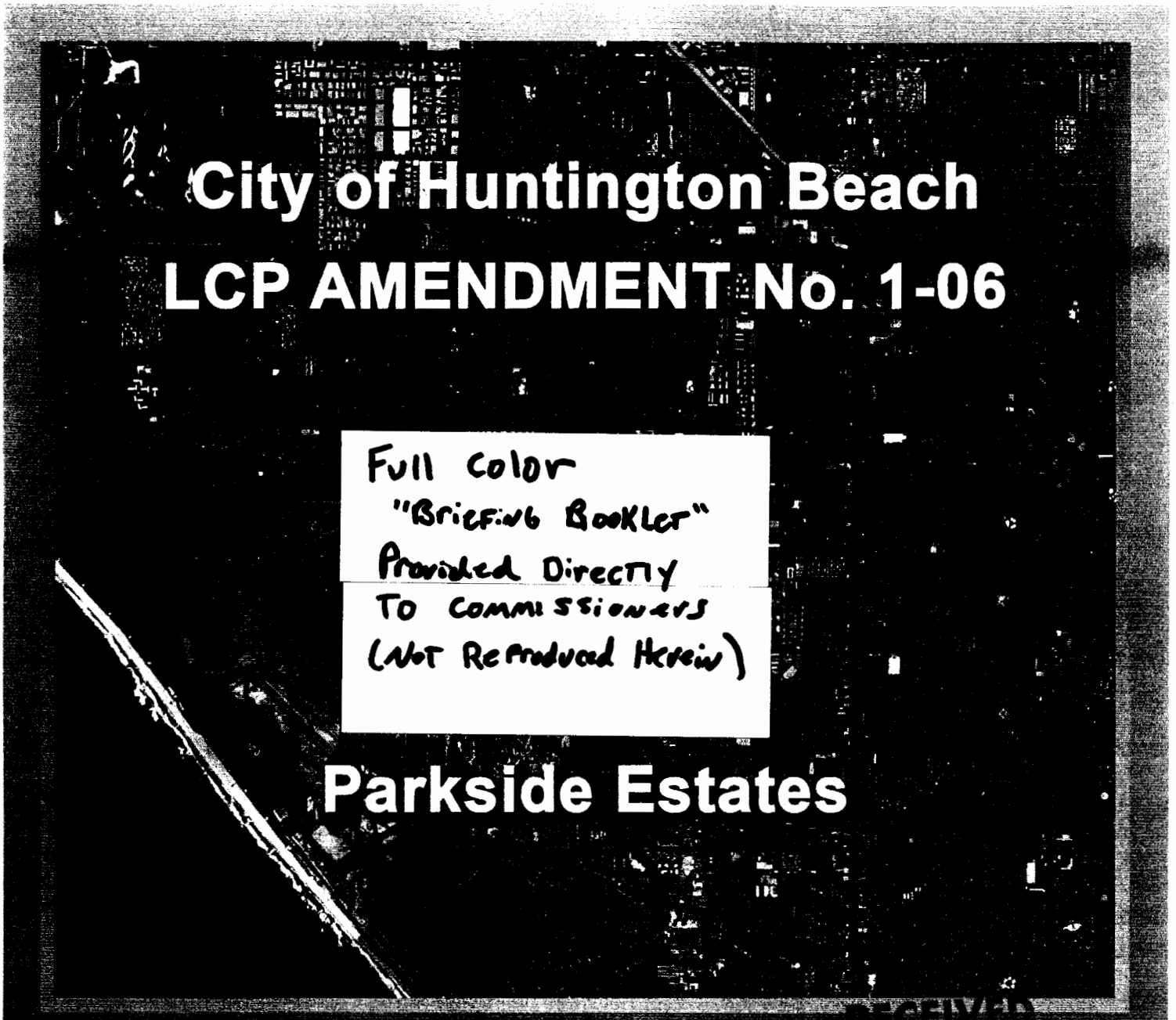
Ron Metzler
Shea Homes

cc: Ms. Sherilyn Sarb
John Dixon Ph.D.
Enclosures

22

Shea Homes Limited Partnership, Southern California Division
An independent member of the Shea family of companies

6003 S. Valencia Avenue, Brea, CA 92823 Phone 714·985·1300 Fax 714·792·2500 www.sheahomes.com/scal



City of Huntington Beach
LCP AMENDMENT No. 1-06

Full Color "Briefing Booklet" Provided Directly To Commissioners (Not Reproduced Herein)

Parkside Estates

Prepared for

The California Coastal Commission

Prepared By:

February 7, 2007

GLENN LUKOS ASSOCIATES

LSA

LSA ASSOCIATES, INC.

wra

ENVIRONMENTAL CONSULTANTS

February 7, 2007

Th22a

Mr. Patrick Kruer, Chairman
Members of the Commission
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Subject: Parkside Estates LCPA–Shea Homes Property–Wetland Delineation

Dear Mr. Kruer and Members of the Commission:

This letter presents the response of the Parkside Estates wetland consultants to the subject wetland determination made by Dr. John Dixon. Specifically, this letter discusses the basic conclusions regarding the delineation of wetlands in areas that have come to be known as the CP (a low-lying area in the former County parcel), AP (a depression along the western edge of the agricultural field), and WP (a shallow depression in the southeastern edge of the agricultural field along the East Garden Grove-Wintersburg Channel). We have also attached a more detailed response to Dr. Dixon's memorandum dated July 27, 2006 (see Attachment 1). To summarize, we believe that Dr. Dixon's conclusions regarding the WP and AP areas are based on two overreaching judgments about: (1) the nature of the vegetation that would grow in these areas in the absence of farming; and (2) the duration of ponding that is necessary to create wetland conditions.

As Dr. Dixon has stated, the determination of wetlands for this project is a complex exercise. This complexity is due to the history of the site, which includes significant changes in drainage patterns and essentially continuous farming over a period of more than 50 years. As a result, we have submitted over 20 studies/analyses (spanning more than 7 years and comprising over 1,000 pages) to the Commission Staff; many of the studies were guided by suggestions from Dr. Dixon. Similarly, Dr. Dixon has carefully reviewed these and other studies of the site and conducted considerable independent analysis of available data. All of these studies are incorporated herein by reference (see Bibliography, attached).

Not surprisingly, Dr. Dixon and we agree on virtually all of the essential facts of this case. However, we dispute two of the significant judgments that Dr. Dixon has made in the interpretation of these facts as part of his delineation of wetlands. Following, we summarize the basic facts that are not in dispute:

- The low-lying portion of the former County parcel that is dominated by hydrophytic vegetation (i.e., CP area) is considered by Dr. Dixon and us to be wetland as defined by the Coastal Act. However, there is not enough undisturbed vegetation in the AP and WP areas to reliably use existing vegetation as an indicator of wetland or upland in these areas.
- We have demonstrated that the CP area is wet often enough and long enough to promote the formation of hydric soils, but that the AP and WP areas are not wet enough to support such hydric soils formation in most years. Dr. Dixon apparently agrees with this conclusion, saying that "it is more likely than not that during most years areas WP and AP are not ponded for the duration needed to promote the formation of hydric soils at those locations, given the nature of the soils present."

conclusion on the fact that hydrophytic vegetation is predominant in the CP area, combined with his judgment that the WP and AP have conditions that are similar to those in the CP. Specifically, he states that "the wetlands in the County parcel and the potential wetlands in the agricultural area are at approximately the same elevations, are depressions relative to the surrounding topography, have a shallow clay-rich confining layer, and have similar surface hydrology." We believe Dr. Dixon has significantly overstated the similarities among these areas and not adequately considered the dissimilarities. These can be summarized as follows:

- Elevations: The WP is approximately 1 foot higher than the CP and AP.
- Depressions relative to surrounding property: The WP has a very small watershed (less than 3 acres) compared to the CP and AP.
- Clay-rich Confining Layer: While all three areas have lenses of clay-rich soils, the depth and permeability of these lenses varies significantly among the areas.
- Similar Surface Hydrology: There is scant evidence that duration of surface ponding is similar among the three areas. The extensive collection of aerial photographs that were used in the estimation of ponding duration/frequency in the WP and AP were inconclusive with respect to Dr. Dixon's CP reference area due to its small size and the nature of the vegetation there. Dr. Dixon seems to be basing his assessment on a few ground-level photographs provided by citizen activist Mark Bixby, yet Dr. Dixon acknowledges that in winter 2002–2003, the CP held water longer than either the WP or AP. Indeed, recent internet postings by citizen activist Bixby have demonstrated that the hydrology of these areas is not similar, especially during periods of relatively low rainfall, which are likely critical for the sustenance of wetland vegetation. Bixby's photographs demonstrate long duration ponding during this rain season (2006–2007) in several portions of the CP area, including the precise area that Dr. Dixon has used for vegetation reference, whereas there has been no ponding of significant duration in either the AP or WP areas. We suspect that frequent (almost every year) ponding in the CP area is the reason for persistence of perennial wetland vegetation in this area, whereas the acknowledged long-term, but infrequent, ponding in the WP and AP areas would not have the same effect.

  To further evaluate potential differences between the CP and WP, we prepared a water budget that addressed surface runoff water availability for these areas. The water budget shows that the CP receives on average approximately double the water (21 inches per unit area) than the WP (11.5 inches per unit area). The 11.5-inch annual average for the WP is consistent with upland areas throughout southern California and would not be sufficient to support hydrophytes. The water budget also shows that in only approximately 7 percent of years would there be sufficient rainfall to support the perennial hydrophytes that Dr. Dixon asserts would grow on the site and in only about one-third of years would there be sufficient rainfall for the WP to support the type of annual hydrophytes that we documented following the heavy rains of 2004/2005.
- Soil Chemistry: Dr. Dixon dismisses the demonstrated differences in soil chemistry among the three sites without acknowledging the potential effects of these differences on vegetation, which is the very parameter that is most fundamental to his conclusion that WP and AP constitute wetlands. This chemistry may affect the composition of the vegetation in two very important ways. First, the acknowledged wetland vegetation in the CP may be influenced as much by the salt in the soil as by the hydrology. The plant species that occur there are salt-tolerant as well as water-tolerant. Second, the extensive testing for indications of anaerobiosis (depletion of soil oxygen) using alpha, alpha-dipyridyl, demonstrated that oxygen is depleted in the CP soils at a rate consistent with findings in other wetland soils, whereas the oxygen is not depleted in the AP

and WP soils at a rate consistent with known wetland soils. This is really the most fundamental indication of whether a site is a wetland. It is the absence of oxygen in the soil caused by saturation with water for prolonged periods that produces the observable conditions that virtually all wetland scientists accept as indicators of wetlands. That is, hydric soils are literally formed when oxygen is absent, and a lack of oxygen is the basic condition that favors truly hydrophytic plants and excludes upland plants that cannot tolerate this lack of oxygen. It is unreasonable and unsupported by the evidence to conclude that the WP and AP would support hydrophytic vegetation in the face of strong evidence that the depletion of soil oxygen does not occur in most years in the WP and AP, whereas oxygen depletion apparently regularly occurs in the CP reference area.

Conclusion

In conclusion, based on the facts on which we and Dr. Dixon agree, we believe there is no scientific justification or fact for the findings of wetland in the WP and AP areas.

Sincerely,

Tony Bomkamp, Senior Biologist/Regulatory Specialist
Glenn Lukos Associates, Inc.

Art Homrighausen, Principal
LSA Associates, Inc.

Mike Josselyn, PhD, PWS, President
WRA Environmental Consultants

Attachments: Attachment 1: Specific Comments on Dr. Dixon Memorandum of July 27, 2006

Attachment 2: Bibliography of Parkside Estates Wetland Documentation

cc: Ron Metzler, Shea Homes

26

Attachment 1: Specific Comments on Dr. Dixon Memorandum of July 27, 2006

Pages 7–9: There is considerable discussion of wetland delineation work that was done during the 1980s with key documents that were dated 1987. Dr. Dixon notes that there have been no significant alterations to the overall hydrology at the site since 1987. However, it should be noted that much of the information that was used in the 1987 reports was derived from aerial photos and maps from the early 1980s prior to the diversion of runoff from the Cabo del Mar development into the storm drain system that was constructed in 1985. As Dr. Dixon notes, "no quantitative data regarding inundation of the MWD parcel was presented in any of the documents." Furthermore, the data used in these early reports were much less extensive than the data in the current analysis.

Page 10: There is reference to documentation of the facultative wetland plant *Bassia hyssopifolia* in the WP area. It should be noted that this plant also commonly occurs in areas that are clearly upland, such as the landward slopes of the East Garden Grove – Wintersburg Channel levee.

Page 16: While Dr. Dixon criticizes the analysis of aerial photographs by Glenn Lukos Associates, he does not acknowledge in this section that there was a more comprehensive analysis of aerial photographs by biologists and hydrologists from Glenn Lukos Associates, LSA Associates, and Exponent, in combination with analysis of rainfall data by LSA Associates. Extensive effort was devoted to ensuring that this was an objective analysis. While this analysis is referenced later in the memorandum, one could infer from Dr. Dixon's statement on page 16 that his was the only objective analysis of this data.

Page 18, Second paragraph: The statement, "The standard for wetland hydrology that I have applied is frequent inundation for at least seven consecutive days" is a key indication of Dr. Dixon's approach to this delineation. As noted in the letter referencing this attachment, there is no regulatory or scientific basis for 7 days as a hydrology standard.

Page 20, First full paragraph: Dr. Dixon's statement that "the Coastal Commission does not have a quantitative standard for hydrology" seems somewhat contradictory to his statement on page 18 that he has applied a 7-day standard.

Page 23, Last paragraph: We agree with Dr. Dixon's hydric soils conclusion "that it is more likely than not that during most years areas WP and AP are not ponded for the duration needed to promote the formation of hydric soils at those locations, given the nature of the soils present."

27

Attachment 2: Bibliography of Parkside Estates Wetland Documentation

Bomkamp, T. (GLA). January 30, 2007. Memorandum to M. Vaughn (CCC) re: "Wetlands Graphs for WP, AP, and CP."

Homrighausen, A (LSA). January 26, 2007. Memorandum to J. Dixon (CCC) re: "Parkside Estates—Recent Comparison of Ponding in the WP and CP Areas."

Bomkamp, T., A. Homrighausen, and M. Josselyn, PhD. January 18, 2006 [corrected to 2007]. Letter to M. Vaughn (CCC) re: "ENTRIX Report ('Peer Review and Recommendations Concerning Wetland Delineations on the Shea/Parkside Property, Huntington Beach, Orange County'); and Responses to E-mails from Dr. John Dixon (dated January 5, 2007 [corrected to December 15, 2006]) and Dr. Lyndon Lee (dated December 27, 2006)."

Bomkamp, T., A. Homrighausen, and M. Josselyn, PhD. January 18, 2007. Technical Memorandum to M. Vaughn and J. Dixon (CCC) re: "Comments Regarding December 14, 2006 ENTRIX Letter Report (ENTRIX Report) Addressed to Mr. Marc Stirdivant, Bolsa Chica Land Trust."

Lohmann, S (LSA). January 18, 2007. Technical Memorandum to J. Harrison (LSA) re: "Shea Homes/Parkside Estates Property—Hydric Soil Assessment."

Bomkamp, T., A. Homrighausen, and M. Josselyn, PhD. January 18, 2007. Technical Memorandum to M. Vaughn and J. Dixon (CCC) re: "Response to Request for Additional Vegetation Data and Comments Addressing Dr. Lyndon Lee E-mail Response to your E-mail dated December 15, 2006."

Bomkamp, T. (GLA). October 31, 2006. Memorandum to J. Dixon (CCC) re: "Water Balance/Budget for WP and CP and Evaluation of Vegetation in WP and AP using Prevalence Index."

Bomkamp, T. (GLA). September 13, 2006. Letter to M. Vaughn (CCC) re: "Response to Bolsa Chica Land Trust letter of August 3, 2006 on Item No. 8c, Huntington Beach LCPA Amendment."

Bomkamp, T. (GLA). September 13, 2006. Letter to M. Vaughn (CCC) re: "Response to Memoranda Prepared by Julie Fontaine of Trestles Environmental Corporation for Marc Stirdivant, Executive Director of Bolsa Chica Land Trust."

Josselyn, M., PhD. (WRA). July 2, 2006. Email to J. Dixon (CCC) re: "Response to question concerning use of dipyridyl to determine hydric soil."

Homrighausen, A. (LSA). June/July 2006. "Compilation of E-mail, Graphs, and Data Regarding Groundwater Elevations."

Bomkamp, T. (GLA). June 26, 2006. Memorandum to J. Dixon (CCC) re: "Additional Information for Parkside Prepared in Response to [J. Dixon's] June 9, 2006 Email."

Bomkamp, T. (GLA). June 5, 2006. Memorandum to J. Dixon (CCC) re: "Expanded Discussion of Alpha, Alpha-dipyridyl Testing Procedures."

LSA Associates, Inc. (LSA). May 18, 2006. Summary of Technical Papers Relative to Possible Wetland Status of Portions of the Parkside Estates Site Known as "County Parcel" and the "AP" and "WP" areas. Prepared for the California Coastal Commission (CCC).

Bomkamp, T. (Glenn Lukos Associates), N. Jordan, P.E. (E^{x}ponent), and R. Ray, Ph. D. (E^{x}ponent). May 15, 2006. Memorandum to J. Dixon and M. Vaughn (California Coastal Commission) re: "Additional Data Regarding Differences between County Parcel and 'AP' and 'WP' Areas, Parkside Estates."

Bomkamp, T. (GLA). March 30, 2006. Memorandum to J. Dixon and M. Vaughn (CCC) re: "Alpha, Alpha-Dipyridyl Testing for AP Area and County Parcel between February 24 and March 28, 2006 at Parkside Estates."

Castles, J. (Pacific Soils Engineering). March 29, 2006. Letter Report to R. Metzler (Shea Homes) re: "Update of Groundwater Monitoring, Parkside Estates, Tract 15377, City of Huntington Beach, California."

Homrighausen, A. (LSA). February 23, 2006. Memorandum to J. Dixon and M. Vaughn (CCC) re: "Response to Draft Memorandum of January 12, 2006, re: Wetlands on the Parkside Estates Project."

Jordan, N., P.E. (E^{x}ponent). February 22, 2006(a). Technical Memorandum to R. Metzler (Shea Homes) re: "Frequency Analysis of Precipitation and Ponding at Parkside Estates."

Jordan, N., P.E. (E^{x}ponent). February 22, 2006(b). Technical Memorandum to R. Metzler (Shea Homes) re: "Correlational and Frequency Analysis of Groundwater at Parkside Estates."

Josselyn, M., PhD. (WRA). February 21, 2006. Letter to M. Vaughn and J. Dixon (CCC) re: "Parkside Estates CDP Application 5-06-021."

Bomkamp, T. (GLA). February 16, 2006. Memorandum to J. Dixon (CCC) re: "Alpha, Alpha-Dipyridyl Testing Methodology."

Harrison, J. (LSA). October 6, 2005. Supplemental Information Transmitted to J. Dixon (CCC) re: "Parkside Estates Project: HNB LCPA No. 1-05 and CDP Application No. 5-05-256, Technical Response to Staff Analysis Presented at Meeting of June 30, 2005."

Homrighausen, A. (LSA). September 15, 2005. Letter to J. Dixon (CCC) re: "Parkside Estates Project: HNB LCPA No. 1-05 and CDP Application No. 5-05-256, Technical Response to Staff Analysis Presented at Meeting of June 30, 2005."

Bomkamp, T. (GLA). June 8, 2005. Letter to J. Dixon (CCC) re: "Analysis of 'Atypical Situation' Methodology and Hydrology on the Parkside Estates Site, Based on Historic and Existing Conditions."

Bomkamp, T. (GLA). May 5, 2005. Memorandum to J. Dixon (CCC) re: "Areas Requiring Clarification within May 4, 2005, Technical Memorandum Regarding Application of Atypical Situation Methodology for Parkside Estates."

Bomkamp, T. (GLA), S. Young (GLA), and J. Harrison (LSA). May 4, 2005. Memorandum to J. Dixon and M. Vaughn (CCC) re: "Application of 'Atypical Situation' Methodology to City Parcel, Parkside Estates Project Site, Orange County California."

Harrison, J. (LSA). April 28, 2005. Email to J. Dixon and M. Vaughn (CCC) re: "Parkside Estates—Additional Info. Re: LSA's 2002 Delineation."

Homrighausen, A. (LSA). March 23, 2005. Letter to M. Vaughn (CCC) re: "Technical Response to February 28, 2005, California Coastal Commission Letter, Coastal Development Permit Application No. 5-03-029 (Shea Homes)."

Bomkamp, T. and S. Young (GLA). March 23, 2005. Memorandum to M. Vaughn and J. Dixon (CCC) re: "Explanation of Apparent Contradiction between Photographic Evidence Provided by Mr. Mark Bixby relative to Ponded Areas on the Shea Homes Parkside Estates Site and the January 6, 2004 Wetland Determination (WD) Prepared by Glenn Lukos Associates."

Young, S. and T. Bomkamp (GLA). January 6, 2004. Letter to R. Metzler (Shea Homes) re: "Wetland Determination for the Parkside Estates Site in the City of Huntington Beach, Orange County, California."

LSA Associates, Inc. (LSA). May 21, 2002. Delineation of Wetlands Subject to U.S. Army Corps of Engineers and California Coastal Commission Regulatory Authority, Parkside Estates Tentative Tract No. 15419, County of Orange, California. Prepared for Shea Homes.

Cohen, S. (Vandermost Consulting Services, Inc.). June 29, 2000. Letter to J. Chung (U.S. Army Corps of Engineers) re: "Request for a Jurisdictional Determination of the Wintersburg Channel, Huntington Beach, CA."

Hewitt, R.S. (Natural Resources Conservation Service). November 20, 1998. Letter to J.R. Barnes (City of Huntington Beach) re: "Prior Converted Cropland Designation, Shea Homes Property."

Rempel, R.D. (California Department of Fish and Game). March 16, 1998. Letter to J.R. Barnes (City of Huntington Beach) re: "Request to Comment on Tom Dodson Report (Kegarice 1997)."

Kegarice, L. (Tom Dodson & Associates). December 17, 1997. Letter to J. Morgan (EDAW Inc.) re: "Verification/ Update of Wetland Determinations for TT #15377."

Gill, J. (U.S. Army Corps of Engineers). May 20, 1992. Letter to V. Albrecht (Beveridge & Diamond, P.C.) re: "The Jurisdictional Status of a Portion of the Metropolitan Water District Property in the Bolsa Chica Estuary."

Sanders, D.R., PhD. (D.R. Sanders and Associates). October 10, 1991. Letter to R. Sater (Beveridge and Diamond, P.C.) re: "Investigation of MWD Portion of Bolsa Chica with Respect to Prior-converted Cropland verses Farmed Wetland Status."

Feldmeth, C. August 5, 1991. Letter to L. Brose (Koll Company) re: "Current Characterization of the MWD Property."

United States Environmental Protection Agency (EPA). February 1989. A Determination of the Geographical Extent of the Waters of the United States at Bolsa Chica, Orange County, California.

D.R. Sanders and Associates. June 24, 1987. Determination of Waters of the United States, Including Wetlands, at Bolsa Chica, California. (includes Appendix F: Bilhorn, T.W. (Earth Science Consultants). June 1987. "Agricultural Area Delineation Bolsa Chica"). Prepared for Beveridge and Diamond, P.C.

California Department of Fish and Game (CDFG). December 11, 1981. Determination of the Status of the Bolsa Chica Wetlands. Prepared for the California Coastal Commission.

LSA

LSA ASSOCIATES, INC.
20 EXECUTIVE PARK, SUITE 200
IRVINE, CALIFORNIA 92614

949.553.0666 TEL
949.553.8076 FAX

BERKELEY
CARLSBAD
COLMA
FORT COLLINS
PALM SPRINGS
POINT RICHMOND
RIVERSIDE
ROCKLIN
SAN LUIS OBISPO

Th22a

February 7, 2007

Mr. Patrick Kruer, Chairman
Members of the Commission
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Subject: Parkside Estates LCPA – Shea Homes Property – Proposed Eucalyptus ESHA Extension

Dear Mr. Kruer and Members of the Commission:

This letter presents the response of the Parkside Estates biological consultants regarding proposals to extend the Bolsa Chica Eucalyptus Environmentally Sensitive Habitat Area (ESHA) northeastward to include the trees at the northwest corner of the Parkside Estates site (California Coastal Commission staff report dated February 2, 2007) and to establish a 100-meter buffer around the trees (staff report and memorandum to Meg Vaughn from Dr. John Dixon dated July 28, 2006). Our response is informed by over 180 surveys of the eucalyptus trees along various portions of the Bolsa Chica Mesa by LSA Associates, Inc. (LSA) biologists, including 79 bird surveys of the western edge of the Parkside Estates property from 2004 through 2006 (Attachment A). In addition, LSA has examined data from 287 days of observations provided by project opponents. As discussed below, we do not believe that recognition of the north eucalyptus trees as part of the ESHA is warranted, much less the 100-meter buffer.

The Original Eucalyptus ESHA Designation

The original 20.5-acre Eucalyptus Grove ESHA at Bolsa Chica was based on a report to the California Coastal Commission by the California Department of Fish and Game (CDFG) dated June 3, 1982. The ESHA stopped where a line extending from the end of Bolsa Chica Street intersected the grove, even though the trees continued approximately 450 feet farther east. Although we do not necessarily question the wisdom of the original designation, we do note that the justification stated at the time was exaggerated, and all issues relevant to the designation do not appear to have been considered.

The 1982 CDFG report cited the 1976 Coastal Act definition of an "environmentally sensitive area" (Section 30107.5):

> *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

32

HNB-MAJ-1-06, Exhibit EE
Page 11 of 19

It stated that the primary value of the grove was for birds, especially raptors. It listed 58 species of birds from the site, at least eight of which were known to nest. Eleven species of raptors were known to utilize the grove, and the red-shouldered hawk (scientific names listed in Attachment B), American kestrel, and barn owl were listed as breeding species, with the white-tailed kite considered a possible breeder. Of these species, only the kite has been found nesting recently in the grove (old gun club site at west end of the ESHA). Also, Cooper's hawk and great horned owl are now known to nest in the grove. The staff report noted 17 species of raptors at Bolsa Chica.

How significant are these numbers of species? An unpublished report by retired United States Fish and Wildlife Service ornithologist and long-time Huntington Beach resident, Loren R. Hays (The Status of Raptorial Species at Huntington Central Park, Orange County, California. 2007) discussed bird use of the 356-acre Huntington Central Park. This urban park is essentially contiguous with the northeast corner of Bolsa Chica ("Edward's Thumb" area). Hays reported at least 30 bird species recorded nesting in the park, including six raptors: white-tailed kite, Cooper's hawk, red-shouldered hawk, red-tailed hawk, American kestrel, and great horned owl. Further, "the possibility of past and even present breeding" of barn owls "cannot entirely be dismissed." Twenty raptor species in all were recorded in the park, more than the staff report's 17 species for Bolsa Chica, and far more than reported by CDFG for the ESHA. The 58 total species originally reported by CDFG is very low and presumably reflects a lack of detailed study of the site prior to the 1982 report. With some effort, as many species could be recorded at almost any site in coastal Southern California. Several times as many species have been recorded at Huntington Central Park.

The unique attributes of the ESHA on a local scale were emphasized by CDFG. They reported that the ESHA trees "are significant because they provide the only locations where tree nesting species...can nest. Consequently, their elimination would mean the loss of most of the breeding population of Bolsa Chica." Elsewhere, "The eucalyptus trees provide the only potential nesting sites for ospreys, white-tailed kites, sharp-shinned [sic] and Cooper's hawks" and "the only potential nesting sites (large trees) for great blue herons and double-crested cormorants." Actually, as noted previously, a number of raptor species nest at adjacent Huntington Central Park; the sharp-shinned hawk has never been known to nest in Orange County; and great blue herons have nested on utility poles in the Bolsa Chica lowlands. And where does this leave the northern eucalyptus trees under discussion or the trees recently added to the east end of the original ESHA, both areas where raptor nesting has been documented? In all these ways, the CDFG report exaggerated the value of the original ESHA.

Perhaps more important than the relatively average value of the Eucalyptus ESHA for raptors and other bird species is the ESHA's proximity to the Bolsa Chica lowlands. The lowlands have been the center of tremendous conservation efforts and every year host hoards of rare nesting waterbirds, including the endangered California least tern and western snowy plover. Among the activities conducted on behalf of those birds is the annual capture and removal of numerous individuals of raptorial species that prey upon the nesting waterbirds. In light of this, it may not have been a good idea to establish an ESHA for nesting raptors in the nearest grove of trees.

33

ESHA Consolidation

LSA has no idea why CDFG chose to limit the eastern extent of the ESHA in 1982 and cannot argue with the logic used by the Commission staff to include the missing contiguous portions of the grove. However, it should be noted that CDFG cited the location of the grove between the Bolsa Chica Mesa and the significant lowland wetlands as an important factor in its recommendation. It should be noted that the ESHA has already undergone considerable expansion through the Commission's processing of the Brightwater and Parkside Estates projects.

The Annexation of the Northern Eucalyptus Trees

By the same logic that the ESHA was extended to the east to include contiguous portions of the original grove, the north eucalyptus trees should not be included in the ESHA, as it is approximately 650feet removed from the designated ESHA and is instead contiguous with the urban woodland of an adjacent condominium complex (see Figure 1).

The staff report: (1) notes that 10 species of raptors have been observed in the north eucalyptus trees; (2) emphasizes that the trees provide the same ecological services as do the rest of the trees bordering the mesa; (3) mentions the nesting of Cooper's hawks and possibly great horned owls; and (4) states as fact that "the trees could be easily disturbed, degraded, or entirely destroyed by development."

In response:

1. Twice as many raptor species have been recorded at a nearby urban park.
2. In May 2006 LSA provided an analysis showing that the north eucalyptus trees do not receive the same amount of raptor use as does the east end of the contiguous grove.
3. Cooper's hawks nested in the northern cluster on eucalyptus trees in 2005 and 2006, the first year in the eucalyptus trees closest to the condominium complex and nearest to one of the busiest walking paths in the area. We do not believe there is any evidence that great horned owls have nested in the northern eucalyptus trees; the apparent misconception may have centered around a common raven nest that was used in 2005 and 2006. Nevertheless, recall that both species nest in Huntington Central Park's urban woodland, with three or four pairs in the case of the Cooper's hawk (Hays 2007).
4. There is ample evidence from here and nearby Huntington Central Park that the raptors in this area are well-adapted to suburban life. There is no reason to fear that these trees will be disturbed, degraded, or destroyed. Nothing more than a treatment similar to Central Park is planned for the adjacent area. The trees are considered a vital part of the planned Parkside Estates development.

Conclusion

LSA believes that this letter provides evidence that the northern eucalyptus trees are not sufficiently "rare or especially valuable" or "easily disturbed or degraded by human activities or developments" so as to warrant recognition as an ESHA. Nevertheless, were it not for the unnecessary effect of the recommended 100-meter buffer on the project, there would be no strenuous objection to the designation of the trees as an ESHA. A buffer of 100 feet to the planned park uses would be acceptable.

Sincerely,

LSA ASSOCIATES, INC.

Art Homrighausen

Art Homrighausen
Principal

35

Figure 1

Parkside Estates

Parkside Estates Property, Showing the Eucalyptus ESHA in the Distance and the North Grove Contiguous with Residential Huntington Beach

HNB-MAJ-1-06, Exhibit EE
Page 15 of 19
36

ATTACHMENT A

DATES OF LSA BIRD SURVEYS AT PARKSIDE ESTATES

ATTACHMENT A
DATES OF LSA BIRD SURVEYS AT PARKSIDE ESTATES

30 Sep 2004
8 Nov 2004
9 Dec 2004
22 Dec 2004
6 Jan 2005
20 Jan 2005
3 Feb 2005
17 Feb 2005
3 Mar 2005
9 Mar 2005
16 Mar 2005
24 Mar 2005
31 Mar 2005
6 Apr 2005
12 Apr 2005
22 Apr 2005
28 Apr 2005
3 May 2005
11 May 2005
18 May 2005
25 May 2005
1 June 2005
8 June 2005
15 June 2005
23 June 2005
29 June 2005
8 Jul 2005
19 Jul 2005
5 Aug 2005
5 Sep 2005
23 Sep 2005
14 Oct 2005
7 Nov 2005
22 Nov 2005
8 Dec 2005
22 Dec 2005
6 Jan 2006
18 Jan 2006
31 Jan 2006
9 Feb 2006
14 Feb 2006
1 Mar 2006
2 Mar 2006
8 Mar 2006
15 Mar 2006
21 Mar 2006
22 Mar 2006
3 Apr 2006
7 Apr 2006
11 Apr 2006
20 Apr 2006
25 Apr 2006
2 May 2006
8 May 2006
16 May 2006
25 May 2006
26 May 2006
30 May 2006
7 Jun 2006
14 Jun 2006
24 Jun 2006
4 Jul 2006
9 Jul 2006
12 Jul 2006
17 Jul 2006
21 Jul 2006
3 Aug 2006
18 Aug 2006
24 Aug 2006
1 Sep 2006
8 Sep 2006
15 Sep 2006
25 Sep 2006
26 Sep 2006
16 Oct 2006
20 Oct 2006
25 Oct 2006
3 Nov 2006
10 Nov 2006

ATTACHMENT B

SCIENTIFIC NAMES OF ANIMALS MENTIONED IN THE TEXT

ATTACHMENT B
SCIENTIFIC NAMES OF ANIMALS MENTIONED IN THE TEXT

Phalacrocorax auritus	Double-crested cormorant
Ardea herodias	Great blue heron
Pandion haliaetus	Osprey
Elanus leucurus	White-tailed kite
Accipiter striatus	Sharp-shinned hawk
Accipiter cooperii	Cooper's hawk
Buteo lineatus	Red-shouldered hawk
Buteo jamaicensis	Red-tailed hawk
Falco sparverius	American kestrel
Tyto alba	Barn owl
Bubo virginianus	Great horned owl

HEARTHSIDE HOMES

RECEIVED
South Coast Region

FEB 13 2007

CALIFORNIA
COASTAL COMMISSION

February 12, 2007

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, Ca. 94105-5400

RE: February 15, 2007 Agenda Item 22a – Shea Homes Parkside Estates

Dear Chairman Kruer and Members of the Coastal Commission:

Signal Landmark, an affiliate of Hearthside Homes, is the owner of a five acre parcel bordering the eastern edge of the Shea Homes Parkside Estates property. The purpose of this letter is to urge the Commission to approve the Shea Homes Parkside Estates development with the applicant's proposed 100 foot Eucalyptus tree ESHA buffer. The Coastal Commission staff recommendation for a 100 meter (328 feet) buffer is excessive and not warranted by the nature of the resource or past Coastal Commission decisions. Imposition of a 100 meter buffer around the eucalyptus trees would effectively eliminate development on approximately 50% of our five acre parcel as well as adversely impact the Goodell parcel to the south.

The issue of whether the Eucalyptus trees on the Shea property constitute an ESHA and perform the same ecological function as the trees on the Hearthside Homes/Signal Landmark property to the south adjacent to the Bolsa Chica lowlands is open to debate by biologists. Whatever habitat value the trees currently provide, that value comes with a condominium complex standing two stories high less than 50 feet from the trees. It's hard to imagine that the habitat value provided by the trees is so sensitive that it warrants the widest buffer the Commission has ever adopted along the state's coastline.

There are statements in the staff report regarding the buffer that deserve some clarification or correction. On page 36, the staff report states that Dr. Findlay of the University of Ottawa recommended a 150 meter buffer for the eucalyptus ESHA on Hearthside's Brightwater project which came before your Commission in April 2005. Dr. Findlay did not make a recommendation specifically for the Brightwater project. Rather, Commission staff cited Dr. Findlay's general recommendations for buffers for certain bird species he studied in Canada as justification for their recommendation of a 100 meter buffer.

6 EXECUTIVE CIRCLE, SUITE 250, IRVINE, CALIFORNIA 92614 (949) 250-7700 FAX (949) 250-7705

The staff report also states on page 37 that USF&WS and CDFG recommended 100 meter buffers for the ESHA's at Bolsa Chica in 1979 and 1982 respectively. While this statement is true, it fails to mention that their recommendations for the wide buffers were based on a land use plan that was far more intense (5,700 homes, hotels, retail and a major highway) than was ultimately proposed by Signal Landmark and approved by the Coastal Commission in 2005, and which proposed development along the entirety of the Bolsa Chica Mesa as well as a significant portion of the lowland area adjacent to the Eucalyptus trees. Since that time, however, substantial changes in the ownership of the surrounding area has occurred. The Parkside project, similar to the Brightwater project, is surrounded by extensive publicly-owned and managed open space areas (e.g., the Lower Bench of the Bolsa Chica Mesa; the Harriett Wieder Park on the Huntington Mesa; and Bolsa Chica Lowlands) such that a 100 meter buffer is not necessary to protect either the trees or bird usage of those trees. In fact, CDFG reviewed and approved of a 150 foot minimum buffer for the Brightwater project in 2004.

The staff report fails to address the key issue associated with development adjacent to ESHA as defined by Section 30240 (b) – Development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas. The staff report does not explain why the proposed 100 foot buffer is inadequate, only that a bigger buffer is better. It fails to make a case for why the 100 foot buffer is inadequate and how it would "significantly" degrade the ESHA as required by Section 30240.

Lastly, nowhere in the staff report does it acknowledge that the Commission did not adopt the staff recommendation for 100 meter buffers in the case of the Brightwater project. Instead, in April 2005, the Commission opted for a variable width buffer with a minimum of 150 feet.

We urge the Commission to approve the 100 foot buffer for the eucalyptus trees as proposed by the City of Huntington Beach and Shea Homes.

Sincerely,

Ed Mountford
Sr. Vice President

Cc: Teresa Henry

OFFICERS
President
Dr. Gerald Chapman
Vice President
Paul Arms
Treasurer
Jim Anderson
Secretary
Marinka Horack

BOARD OF DIRECTORS
Eileen Murphy
Dr. Jan Vandersloot
Julie Bixby
Carrie Thomas
Paul Horgan
Sandy Genis
Karen Merickel-Wood
Rudy Vietmeier
Vi Cowden
Dr. Janed Sax
Connie Boardman

ADVISORY BOARD
State Senator Tom Harman
Councilmember Debbie Cook
Diana Casey
Nancy Donaven
Norma Gibbs
Bob Goodrich
Janice Kellogg
Jerry Patterson
Linda Moulton Patterson
Rochelle Pazanti
Louis Robles
Jayson Ruth
Dr. Richard Sax
Dr. David Sullivan
Mary Urashima
Grace Winchell

ENDORSEMENTS
Amigos de Bolsa Chica
Algalita Marine Research Foundation
Anza Borrego Foundation
Ballona Wetlands Land Trust
City of Huntington Beach
Friends of Harbors, Beaches and Parks
Huntington Beach Wetlands Conservancy
Huntington Beach Tomorrow
Orange Coast League of Women Voters
Orange County Coastkeeper
Sea and Sage Audubon
Sierra Club Angeles Chapter
Surfrider Foundation
Wildlands Conservancy

RECEIVED
South Coast Region
FEB - 9 2007
CALIFORNIA
COASTAL COMMISSION

February 8, 2007

Mr. Patrick Kruer, Chair
Members of the Commission
California Coastal Commission
200 Oceangate – 10th Floor
Long Beach, CA 90802-4416

RE: Item Th 22a - Major Amendment Request No. 1-06 to the City of Huntington Beach Certified Local Coastal Program (For Public Hearing and Commission Action at the February 15, 2007 meeting in San Diego).

Dear Mr. Kruer and Members of the Commission:

These comments are submitted on behalf of the Bolsa Chica Land Trust, a grassroots, nonprofit organization of nearly 5,000 members residing in California and twenty other states. Our objective is to provide recommendations to the California Coastal Commission (CCC) which will ensure protection of the coastal zone resource values of the Bolsa Chica ecosystem in Huntington Beach, California.

The Bolsa Chica Land Trust fully supports CCC staff's recommendation for the denial of the LCP and IP as submitted by the City. Staff also propose approving these items with suggested modifications. While we agree with some of the proposed modifications, the Land Trust still has concerns regarding the proposals for Wetlands, ESHA, and Water Quality. These concerns are detailed below.

I. WETLANDS

The Land Trust is pleased that staff has recognized the wetland areas denoted as CP, AP, and WP, and fully supports the recommendation for 100ft buffers of any wetlands. However, we feel that CCC staff ecologist Dr. John Dixon has too conservatively sized AP and WP as noted in his memo of July 27, 2006 (Exhibit K) and outlined in Exhibit

L, and we are still convinced that there are additional wetlands on the subject property as evidenced by the ponding and vegetation data collected by Mark Bixby, the soil samples collected by Drs. Lyndon Lee and Peggy Fiedler, and the written analyses conducted by biologist Julie Fontaine. In their memo of December 14, 2006, Drs. Lee and Fiedler state that wetland delineations done to date understate "the extent of CCC jurisdictional wetlands on the site." They reached this conclusion by taking soil samples during a one-day visit to the property in December 2006. They freely admit that they did not find hydric soils at every test location; nevertheless, they found evidence of hydric soils in some places not currently recognized by the CCC as wetlands. As a one-day visit is insufficient to conduct a proper delineation, Drs. Lee and Fielder recommend that there be further study with the proper resources.

The landowner has not been shy about its opposition to the existence of the WP wetlands and would eliminate it altogether if possible (Exhibit R), proposing that "...the WP were eliminated and mitigated at the westerly area of the project site to create a larger, consolidated wetland..." This proposal flies in direct opposition to the famous "Bolsa Chica Decision" (*Bolsa Chica Land Trust v. Superior Court (1999) 71 Cal. App. 4th 493*). As summarized by David P. Hubbard in the "Hotissues" newsletter (http://www.procopio.com/publications/pdfs/HI_august_2000.pdf), "The court in *Bolsa Chica* held that development related impacts on ESHAs cannot be mitigated through off-site restoration — even when the restoration project promises to create "better" habitat..." The current staff report states that "[Wetland] Buffers also provide transitional habitat and upland area necessary for survival of various animal species (pg. 32)." WP still provides habitat resources for wildlife and should not be moved. Coastal Act Section 30233 states that there are seven permitted uses of a wetlands; residential housing is not one of them.

Indeed, the existence and size of WP brings up the issue of illegal, unpermitted fill. As noted in Footnote 2 of the current staff report:

> "More recently a box plough was used to fill area WP, which is apparent in 2006 topographic maps. The box plough fill is under investigation by Commission staff as an alleged violation. Accordingly, relying on the topography prior to the alleged violation yields the appropriate comparison."

It should be noted that the illegal fill of WP occurred *just one week* after CCC staff ecologist Dr. John Dixon released his draft memo of December 15, 2005, stating that wetlands were present at this location--further evidence of the landowner's wish to see WP nullified. This cannot be allowed to happen, and WP must be restored to its original topography. We are perplexed that an entire year has passed without any enforcement action by the CCC.

WP is not the only portion of the property that has been subjected to unpermitted fill. The southwest portion of the property has been the site of unpermitted fills for at least a decade (Mark Bixby, letter to the CCC, February 1, 2007). The Commission standard is

to consider any resources destroyed without benefit of a valid permit as if those resources still existed. Taken together, the unpermitted fill of WP, the unpermitted fill in the southwestern area, the ponding and vegetation data collected by Bixby, and the soils data of Dr. Lee suggest that AP, CP, and WP constitute contiguous seasonal wetlands, and clearly warrants further investigation.

II. ESHA

Section 30107.5 of the Coastal Act reads: "'Environmentally sensitive area' means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

Section 30240 (a) of the Coastal Act states in part: "Environmentally Sensitive Habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed in those areas."

The Land Trust agrees with staff that both the north and south Eucalyptus groves constitute ESHA for numerous raptor species, and supports the proposed 100m buffer for all ESHA. The Land Trust also fully supports Dr. Dixon's memo of January 31, 2007, which refines his ESHA buffer recommendations (Exhibit Z). Dixon's memo states that passive recreational uses "...could be allowed in the outer one-third of the ESHA but should be located in the 10m closest to development where feasible." We ask that this clarifying language replace the current erroneous text ("within the outer 100 */meters/* only") in Open Space Conservation item #B-5 on page 15 of the staff report when the report is presented at the public hearing.

It is puzzling that the two ESHA buffer zones are separated by 25-50 feet rather than conjoined (Exhibit L). Birds and wildlife regularly transit from one grove to the other. As the groves stand now, as unprotected areas, they are easily disturbed and degraded by bicyclists, dog walkers, graffiti vandals, and paint ball wars. Why should these disruptive activities be permitted to continue in the gap between the two buffers? There is no logical reason for an ESHA boundary to end at an artificial border that wildlife cannot see and will not observe. A single unified buffer should encompass both groves to preserve the contiguous habitat corridor and ecosystem integrity. As raptor expert Peter H. Bloom stated in his report to the Bolsa Chica Land Trust of June 8, 2006:

> "Maintaining ecosystem integrity (see Karr 1992, De Leo and Levin 1997) of the Eucalyptus ESHA remains an important attribute for maintaining the remnant local raptor ecosystem component, present and future contributions to the regional raptor population and migration corridor, and to support prey components that contribute to a functional ecosystem."

III. WATER QUALITY

The landowner proposes to place a Natural Treatment System (NTS) within the ESHA buffer. While the Land Trust normally would encourage the use of NTS for water quality, we object to its placement within the buffer. As noted previously, buffers provide transitional habitat and upland area for wildlife. Most of the raptor species that depend on the ESHA are upland hunters. Replacing preserved upland ESHA buffer space with NTS wetlands will be a negative impact upon the raptors and the viability of the ESHA. Again, the Coastal Act clearly states that ESHAs "*shall be protected against any significant disruption of habitat values.*" The primary purpose of an NTS is to filter out urban pollutants (petroleum residues, pesticides, fertilizer, etc.) from the development site, not to provide biological integrity or habitat value. Furthermore, an NTS requires periodic maintenance; in other words, human and mechanical disturbance. We ask that the NTS be placed *outside* of the buffer to minimize disturbance to wildlife and to let the buffers be true buffers that protect habitat.

IV. CONCLUSION

In conclusion, the Bolsa Chica Land Trust supports the recommendation that the Commission DENY the Land Use Plan Amendment and Implementation Plan as submitted by the City of Huntington Beach. The Land Trust also supports the staff recommendations for 100ft wetland buffers and 100m ESHA buffers. However, we do respectfully request that the Commission review and amend the proposals for the Wetlands, ESHA, and Water Quality aspects of the LUP and IP.

Sincerely,

Gerald Chapman, President
Bolsa Chica Land Trust

cc: Ms. Meg Vaughn
Dr. John Dixon

A6